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5 Attorneys for Petitioner  
6 McKesson Corporation  
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8 STATE OF CALIFORNIA  
9 STATE WATER RESOURCES CONTROL BOARD  
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11 In re:

Case No. \_\_\_\_\_

12 Status of Pollution at Vacant Parcel APN  
13 087002301400 at Zwissig Way, and  
14 Requirement for Second Five-Year Status  
15 Report, Former McKesson Chemical Facility,  
33950 7th Street, Union City, Alameda County  
(California Regional Water Quality Control  
Board, San Francisco Bay Region)

PETITION FOR REVIEW  
\_\_\_\_\_

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18 Petitioner McKesson Corporation submits this Petition for Review of a letter directive  
19 issued by the California Regional Water Quality Control Board, San Francisco Bay Region  
20 ("RWQCB") entitled "Status of Pollution at Vacant Parcel APN 087002301400 at Zwissig Way,  
21 and Requirement for Second Five-Year Status Report, Former McKesson Chemical Facility,  
22 33950 7th Street, Union City, Alameda County" ("Letter Decision," attached as Exhibit A). This  
23 Petition for Review is filed in accordance with Section 13320 of the California Water Code and  
24 Section 2050 of Title 23 of the California Code of Regulations.

25 Section 2050(a) requires that a petition for review contain certain items of information.  
26 Each of the required items are set forth below.

27 1. Petitioner is McKesson Corporation. Petitioner's address is c/o Jean Mescher,  
28 1 Post Street, 34<sup>th</sup> Floor, San Francisco, California 94104, (415) 983-8300,

1 Jean.Mescher@McKesson.com. Communication concerning this matter should be sent to  
2 Petitioner's attorneys at the address provided in the caption of this petition.

3 2. Petitioner requests that the State Water Resources Control Board ("SWRCB")  
4 review the Letter Decision.

5 3. The RWQCB, through its Executive Officer, Bruce H. Wolfe, and Stephen Hill  
6 and Cherie McCaulou of his staff, issued the Letter Decision on April 14, 2010.

7 4. Petitioner will submit to the SWRCB as an amendment to this petition a full and  
8 complete statement of reasons that the Letter Decision was improper and should be set aside and  
9 reversed.

10 5. Petitioner will submit to the SWRCB as an amendment to this petition a statement  
11 of the manner in which Petitioner is aggrieved by the Letter Decision.

12 6. Petitioner requests that the SWRCB set aside and reverse the Letter Decision or  
13 direct the RWQCB to set aside and reverse the Letter Decision.

14 7. Petitioner will submit to the SWRCB as an amendment to this petition a complete  
15 statement of points and authorities in support of this petition.

16 8. Petitioner has provided a list of persons known by the RWQCB to have an interest  
17 in the subject matter of this petition as Exhibit B. Petitioner may submit as an amendment to this  
18 petition additional information on persons known by the RWQCB to have an interest in the  
19 subject matter of this petition.

20 9. A copy of this Petition for Review and the attached Exhibits A and B have been  
21 sent to the RWQCB.

22 10. The Letter Decision was issued without notice or a hearing by the RWQCB.  
23 Petitioner has, however, by letter to the RWQCB, and in telephone discussions with RWQCB  
24 staff, responded to the Letter Decision and objected to it to the extent that it states findings and  
25 conclusions not supported by the record and in conflict with prior orders of the RWQCB.

26 11. Petitioner will submit to the SWRCB as an amendment to this petition a copy of  
27 its request to the RWQCB for preparation of the RWQCB's record concerning the Letter  
28 Decision.

1           12.     Petitioner requests that the SWRCB hold a hearing at which Petitioner can present  
2 additional evidence to the SWRCB. Petitioner will submit to the SWRCB as an amendment to  
3 this petition statements regarding evidence as appropriate under Section 2050(b). For all the  
4 reasons stated herein, Petitioner requests that the State Water Resources Control Board set aside  
5 and reverse the Regional Water Quality Control Board's Letter Decision or direct the Regional  
6 Water Quality Control Board to set aside and reverse the Letter Decision.

7 Dated: May 13, 2010

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9                               Respectfully submitted,

10                              BARG COFFIN LEWIS & TRAPP, LLP

11                              By:   
12

13                              R. MORGAN GILHULY

14                              Attorneys for Petitioner  
15                              McKesson Corporation  
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# **EXHIBIT A**



Linda S. Adams  
Secretary for Environmental  
Protection

# California Regional Water Quality Control Board

## San Francisco Bay Region

1515 Clay Street, Suite 1400, Oakland, California 94612  
(510) 622-2300 • Fax (510) 622-2460  
<http://www.swrcb.ca.gov/rwqcb2>



Arnold Schwarzenegger  
Governor

Date: April 14, 2010  
File No: 01S0014 (ccm)

McKesson Corporation  
Attn: Jean Mescher  
[Jean.Mescher@McKesson.com](mailto:Jean.Mescher@McKesson.com)  
1 Post Street, 34<sup>th</sup> Floor  
San Francisco, CA 94104

SUBJECT: Status of Pollution at Vacant Parcel APN 087002301400 at Zwissig Way, and Requirement for Second Five-Year Status Report, Former McKesson Chemical Facility, 33950 7<sup>th</sup> Street, Union City, Alameda County

Dear Ms. Mescher:

This letter responds to the February 25, 2010, meeting with Regional Water Board Staff regarding the issue of a second source of volatile organic compounds (VOCs) at McKesson's extraction well ES-16 on Zwissig Way, and also responds to Omega's "Second Source Documentation letter" dated March 25, 2010. Based on the sudden concentration increase of 1,1,1-TCA from 0.7 µg/l in May 2001 to 88 µg/l in November 2001, further increasing to 440 µg/l in November 2004, we concur that a second source of 1,1,1-TCA, other than the former McKesson Chemical Facility, appears to have been released in the vicinity of well ES-16. Subsequent decreasing concentration trends, recently at 47 µg/l in November 2009, indicate the release has ceased, thus removing the urgency to require other property owners to conduct investigations to identify the source of 1,1,1-TCA. Accordingly, Staff will not require further investigation by others, and McKesson will continue to operate ES-16 as part of its shallow groundwater extraction well network for remediation of VOCs.

### Plume Delineation

During the February 2010 meeting, Staff also broached the subject of additional plume delineation and possible expansion of McKesson's extraction system to address VOC impacts in the deeper aquifer. McKesson's current groundwater extraction well network consists of 17 extraction wells in the shallow aquifer and two in the intermediate aquifer for migration control of VOC plumes extending nearly a half mile from the site. The latest water quality data presented in the January 2010 Monitoring Report indicates that the lateral and vertical extent of the groundwater contamination is not fully defined and that the extraction well network is not adequate to capture VOCs from all the impacted aquifers. Staff recommends additional wells be installed in the intermediate and deep aquifers, and that the remedial system be expanded to prevent plume migration in the deep aquifer.

### Five-Year Status Reporting

McKesson Corporation submitted a Five-Year Status Report in August 2004, to comply with Task C.3 of the Final Site Cleanup Requirements Order 99-071. The report concluded that the remediation system was effective, and that groundwater cleanup goals may be achieved within 30

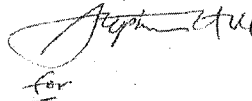
years or less, and that no modifications to the existing remedial system were warranted. To assist Staff in determining the extent and magnitude of the pollution and to aide in evaluating the effectiveness of the approved cleanup plan in meeting the cleanup standards, preventing further migration of pollutants, and protecting water quality and the health and safety of sensitive receptors, McKesson has agreed to submit a second Five-Year Status Report no later than August 13, 2010. If cleanup standards have not been met and are not projected to be met within a reasonable time the report should assess the technical practicability of meeting cleanup standards and may propose an alternative cleanup strategy. In addition to the Items a-g listed under Task C.3 in the Order, the report shall also include the following:

- Evaluation of the lateral and vertical extent of VOCs in all aquifers, including Newark Aquifer impacts, attributed by releases from the former McKesson Chemical Facility;
- Isoconcentration maps drawn with solid lines based on known data, and dotted lines where data is missing;
- Proposed well locations for fully defining plumes lateral and vertical extent;
- Proposed extraction points for all impacted aquifers not currently addressed by McKesson's remedial system;
- Assessment of potential vapor intrusion impacts to structures overlying plume areas, if any;
- Future impacts, if any.

This requirement for a report is made pursuant to Water Code Section 13267, which allows the Regional Water Board to require technical or monitoring program reports from any person who has discharged, discharges, proposes to discharge, or is suspected of discharging waste that could affect water quality. The attachment provides additional information about Section 13267 requirements. Any extension in the above deadline must be confirmed in writing by Regional Water Board staff.

If you have any questions, please contact Cherie McCaulou of my staff at (510) 622-2342 [e-mail [cmccaulou@waterboards.ca.gov](mailto:cmccaulou@waterboards.ca.gov)].

Sincerely,



Bruce H. Wolfe  
Executive Officer

Digitally signed by Stephen Hill  
Date: 2010.04.14 13:00:56  
-07'00'

#### Attachment

cc: Steven Inn, ([Steven.Inn@ACWD.com](mailto:Steven.Inn@ACWD.com))  
Doug Young, ([Douglas.Young@ACWD.com](mailto:Douglas.Young@ACWD.com))  
Bruce Scheibach, ([BScheibach@OmegaEMI.com](mailto:BScheibach@OmegaEMI.com))  
Morgan Gilhuly, ([RMG@BCLTLAW.com](mailto:RMG@BCLTLAW.com))



Linda S. Adams  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board

## San Francisco Bay Region

1515 Clay Street, Suite 1400, Oakland, California 94612  
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<http://www.waterboards.ca.gov/sanfranciscobay>



Arnold Schwarzenegger  
Governor

### Fact Sheet – Requirements for Submitting Technical Reports Under Section 13267 of the California Water Code

#### **What does it mean when the Regional Water Board requires a technical report?**

Section 13267<sup>1</sup> of the California Water Code provides that "...the regional board may require that any person who has discharged, discharges, or who is suspected of having discharged or discharging, or who proposes to discharge waste...that could affect the quality of waters...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires."

#### **This requirement for a technical report seems to mean that I am guilty of something, or at least responsible for cleaning something up. What if that is not so?**

The requirement for a technical report is a tool the Regional Water Board uses to investigate water quality issues or problems. The information provided can be used by the Regional Water Board to clarify whether a given party has responsibility.

#### **Are there limits to what the Regional Water Board can ask for?**

Yes. The information required must relate to an actual or suspected or proposed discharge of waste (including discharges of waste where the initial discharge occurred many years ago), and the burden of compliance must bear a reasonable relationship to the need for the report and the benefits obtained. The Regional Water Board is required to explain the reasons for its request.

#### **What if I can provide the information, but not by the date specified?**

A time extension may be given for good cause. Your request should be promptly submitted in writing, giving reasons.

#### **Are there penalties if I don't comply?**

Depending on the situation, the Regional Water Board can impose a fine of up to \$5,000 per day, and a court can impose fines of up to \$25,000 per day as well as criminal penalties. A person who submits false information or fails to comply with a requirement to submit a technical report may be found guilty of a misdemeanor. For some reports, submission of false information may be a felony.

#### **Do I have to use a consultant or attorney to comply?**

There is no legal requirement for this, but as a practical matter, in most cases the specialized nature of the information required makes use of a consultant and/or attorney advisable.

#### **What if I disagree with the 13267 requirements and the Regional Water Board staff will not change the requirement and/or date to comply?**

You may ask that the Regional Water Board reconsider the requirement, and/or submit a petition to the State Water Resources Control Board. See California Water Code sections 13320 and 13321 for details. A request for reconsideration to the Regional Water Board does not affect the 30-day deadline within which to file a petition to the State Water Resources Control Board.

#### **If I have more questions, whom do I ask?**

Requirements for technical reports include the name, telephone number, and email address of the Regional Water Board staff contact.

*Revised January 2008*

<sup>1</sup> All code sections referenced herein can be found by going to [www.leginfo.ca.gov](http://www.leginfo.ca.gov).

## **EXHIBIT B**



## EXHIBIT B

The following persons are known by the RWQCB to have an interest in the subject matter of McKesson Corporation's Petition for Review re: Status of Pollution at Vacant Parcel APN 087002301400 at Zwissig Way, and Requirement for Second Five-Year Status Report, Former McKesson Chemical Facility, 33950 7th Street, Union City, Alameda County (California Regional Water Quality Control Board, San Francisco Bay Region):

- Doug Young, [Douglas.Young@ACWD.com](mailto:Douglas.Young@ACWD.com)  
Steven Inn, [Steven.Inn@ACWD.com](mailto:Steven.Inn@ACWD.com)  
Alameda County Water District  
43885 South Grimmer Boulevard  
Fremont, CA 94538-6375  
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